

INSURANCE:
BURIAL AGREEMENTS:

Fully described Pre-Arranged Burial Agreement is not an insurance contract within language of Section 375.310, RSMo 1949.



September 29, 1955

Honorable Weber Gilmore
Prosecuting Attorney
Scott County
Sikeston, Missouri

Dear Sir:

This opinion construes the McMickle Pre-Arranged Burial Agreement, enclosed in your recent request for a formal opinion, with a view to determining if the same is an insurance contract being issued in violation of Section 375.310 RSMo 1949, which statute prohibits unauthorized persons or corporations from transacting an insurance business in Missouri. Provisions of the contract you submitted are set out in full in order that no doubt will be entertained as to the contract provisions to which this opinion is addressed. We quote the contract in the following language:

"McMICKLE

"Pre-Arranged Burial Agreement

"I hereby request the McMickle Funeral Home, East Prairie, or Charleston, Missouri, to take charge of my body at the time of death, furnish all items incident to my burial, properly conduct my funeral, all in accordance with the pre-arranged Burial Agreement hereinafter set out, in the amount of \$250.00.

"In consideration of the hereinafter set out agreement, I hereby agree to pay the sum of \$250.00 in equal installments of \$1.00 per

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month on the first day of each month hereafter until said sum is fully paid. I further agree that should I fail to make such monthly payments by the 10th day of each month then this contract shall be void and of no effect and that there shall be no liability thereunder, all payments being made hereunder being forfeited as liquidated damages for the breach of this agreement.

"In consideration of the payment of \$1.00, and the payment of the sum of \$1.00 each month hereafter, the McMikle Funeral Home, East Prairie or Charleston, Missouri, agrees in the event of the death of the undersigned and in the event of full compliance with the terms of this agreement and provided that undersigned has paid the amount due provided for herein, to take charge of and conduct the funeral of the undersigned, and furnish the following merchandise and services to the value of \$250.00:

1. Transporting body to preparation room.
2. Bathing the body.
3. Embalming the body.
4. Furnish casket and outside box.
5. Returning the body to family residence, if requested.
6. Furnishing hearse service.
7. Use of funeral home and chapel.
8. Use of drape set and catafalque.
9. Use of folding chairs.
10. Furnish door badge.
11. Furnish death certificate and burial permit.
12. Furnish one family car.
13. Personal services.
14. Furnish evergreen.
15. Lowering device and grave tent.
16. Furnish grave marker.
17. Furnish flower racks.
18. Attend to flowers.
19. Furnish acknowledgement cards.
20. Attend to filing insurance claims.

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"In the event that the deceased has died a distance in excess of 50 miles of East Prairie or Charleston, Missouri, or in the event the burial is to take place at a distance of more than 50 miles of East Prairie or Charleston, Missouri, in each instance a reasonable charge shall be made for distance traveled in excess of 50 miles.

"This agreement does not include cemetery lot, grave or opening of the grave; nor does it include the necessary clothing for the deceased.

"The McMikle Funeral Home agrees to furnish, free of extra charge, ambulance service within a radius of 50 miles of East Prairie or Charleston, Missouri, to the undersigned, said service not to exceed two trips during any one calendar year.

"All of the benefits and provisions of this agreement may inure to any member of the immediate family of the undersigned should such contingency arise, upon payment of the unpaid installments due under the contract. In no event will the above services be rendered to the holder of this contract or to members of the immediate family unless the total consideration provided for herein shall have been fully paid.

"Nothing herein contained shall be construed as a policy of insurance whereby the McMikle Funeral Home agrees to pay any money under the terms of this agreement.

"Dated at East Prairie, or Charleston, Missouri, this _____ day of _____, 195__.

Witness

McMIKLE FUNERAL HOME

BY _____."

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Enclosed is a copy of an opinion issued by this office under date of August 1, 1955, construing an agreement with provisions almost identical to those contained in the agreement quoted above. The essential differences may be pointed out by setting out paragraphs three and seven of the above quoted agreement and underscoring the two new provisions which have been added, and inserting parenthetically the language deleted from the third paragraph as it appeared in the agreement construed on August 1, 1955.

The third paragraph of the agreement being construed provides, in part, as follows:

"In consideration of the payment of \$1.00, and the payment of the sum of \$1.00 each month hereafter (on the first day of each month after date hereof), the McMikle Funeral Home, East Prairie or Charleston, Missouri, agrees in the event of the death of the undersigned and in the event of full compliance with the terms of this agreement and provided that undersigned has paid the amount due provided for herein, to take charge of and conduct the funeral of the undersigned, and furnish the following merchandise and services to the value of \$250.00: * * *" (Emphasis and parentheses supplied.)

The seventh paragraph of the agreement being construed provides as follows:

"All of the benefits and provisions of this agreement may inure to any member of the immediate family of the undersigned should such contingency arise, upon payment of the unpaid installments due under the contract. In no event will the above services be rendered to the holder of this contract or to members of the immediate family unless the total consideration provided for herein shall have been fully paid." (Emphasis supplied.)

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In our opinion of August 1, 1955, heretofore referred to, we ruled that the rendition of services to the contract holder who had not defaulted in his monthly payments was unconditional, thereby establishing the element of "risk" so essential to an insurance contract. However, an additional clause has been added to paragraph seven of the contract now being construed which provides as follows:

"In no event will the above services be rendered to the holder of this contract or to members of the immediate family unless the total consideration provided for herein shall have been fully paid."

We construe the term "total consideration" as used in the above quoted provision from paragraph seven of the agreement to refer to the full value of services to be rendered to the value of \$250.00, and not to the consideration measured by installment payments made by the holder of the contract at the time of his death. Consequently, under the agreement being construed the contract holder, as well as those members of his immediate family who would choose to have the benefits of this agreement inure to them, must meet the full cost of the services to be rendered up to the value of \$250.00. Under the clause referred to and now appearing in the seventh paragraph of the agreement being construed, no "risk" whatever is being assumed by the McMikle Funeral Home by which it might be compelled, by the uncertainty of life or economic condition of the contract holder, to render services at a cost disproportionate to the value of such services to the amount of \$250.00. As written, the agreement is nothing more than a promise to the contract holder that he, or members of his immediate family, may look to McMikle Funeral Home for funeral services to the value of \$250.00 upon the death of the contract holder, on condition that the full value of such services be paid.

CONCLUSION

It is the opinion of this office that the Pre-Arranged Burial Agreement described in this opinion is not an insurance contract and issuance of the same is not a violation of Section 375.310 RSMo 1949.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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